

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GARY E. AFFONSO,

Plaintiff,

v.

METROPOLITAN LIFE INSURANCE
COMPANY, et al.,

Defendants.

No. C 10-5054 PJH

**ORDER GRANTING MOTION FOR
RECONSIDERATION**

Now before the court is plaintiff's motion for reconsideration of that portion of the July 6, 2011 order applying the abuse of discretion standard of review to this matter. Plaintiff contends that Morgan Stanley denies the existence of the plan document by which its life insurance plans were created, leaving only the insurance policy to serve as the plan document. To the extent that plaintiff seeks relief on the ground that the summary plan description is not the plan document, the court denies any relief because the court has already held that the plan document is the same document that serves as the summary plan description. Doc. no. 78.

Plaintiff further argues that because the insurance policy does not grant discretion to the plan administrator, the denial of benefits must be reviewed de novo. Doc. no. 96. The court has determined that the SPD expressly refers to the insurance contract. Doc. no. 78 (citing Braun Decl., Ex. 1 at Morgan Stanley 000175 ("benefits provided by each of the Plans are limited to the coverage of the insurance contract")). Defendant MetLife contends that the Plan document defers to the insurance policy only when there is a conflict as to the benefits insured by those policies, yet defendant has not addressed the apparent conflict raised by plaintiff in that the insurance policy lacks a grant of discretion to MetLife, whereas

1 the plan document does grant discretion. Based on the newly produced insurance policy
2 documents that have been presented on plaintiff's motion for reconsideration, which were
3 not presented to the court on defendants' motion for abuse of discretion review, the court
4 concludes that reconsideration is proper under Civil Local Rule 7-9 and that defendants
5 have not met their burden to show that the abuse of discretion standard of review is
6 applicable under Grosz-Salomon v. Paul Revere Life Ins. Co., 237 F.3d 1154, 1161-62 (9th
7 Cir. 2001).

8 The order granting defendants' motion for abuse of discretion review is hereby
9 withdrawn to the extent that it established the standard of review, and the de novo standard
10 of review will be applied. See Abatie v. Alta Health & Life Ins. Co., 458 F.3d 955, 964 (9th
11 Cir. 2006) (en banc).

12 **IT IS SO ORDERED.**

14 Dated: October 13, 2011



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16 PHYLLIS J. HAMILTON
17 United States District Judge
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